

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

ERNEST FRANK CHASTAIN,

Defendant and Appellant.

D061652

(Super. Ct. No. FSB036676)

APPEAL from an order of the Superior Court of San Bernardino County, Bryan F. Foster, Judge. Affirmed.

Ernest Frank Chastain appeals a postjudgment order denying his motion to modify his sentence to reduce a restitution fine. Appellate counsel asked this court to conduct an independent review of the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436. After reviewing the entire record, we identify no reasonably arguable appellate issues and affirm the judgment.

BACKGROUND

The evening of October 17, 2002, Steven Van Gestal was shot to death in his home in Highland. Donald Peron, a drug dealer, also lived there. Chastain, who previously lived there, went to the home to buy drugs. Peron was uncooperative and Chastain returned to the home later that evening along with codefendant Jorge Herrera, who was wearing a hooded sweatshirt with the hood on. Herrera struck Peron on the head with a gun, held the gun to his temple and demanded everything Peron had. Peron tried to escape, and Chastain grabbed him around the shirt collar and ripped off some of his gold chains. Peron kept going, and Van Gestal, who was in Peron's path, was struck by a bullet. In a 911 call Peron identified Chastain as the shooter, although at trial he testified Chastain was not the shooter.

A jury convicted Chastain of first degree murder (Pen. Code, § 187, subd. (a)),¹ and made true findings he personally used a firearm (§ 12022.53, subd. (b)) and personally and intentionally discharged a firearm (§ 12022.53, subd. (c)). The court sentenced him to prison for an indeterminate term of 25 years to life to run consecutively with a determinate term of 20 years for the firearm enhancement under section 12022.53, subdivision (c). The court also ordered him to pay a \$10,000 restitution fine under section 1202.4, subdivision (b). Chastain appealed and this court affirmed the judgment. (*People v. Chastain* (Jan. 13, 2011, D058089) [nonpub. opn.])

¹ All further statutory references are also to the Penal Code unless otherwise stated.

In November 2011 Chastain, acting on his own behalf, brought a motion in superior court to modify his sentence (§ 1202.4, subd. (d)) on the ground the court did not properly consider his ability to pay restitution. He requested the reduction of the \$10,000 fine to \$200. The trial court denied the motion.

DISCUSSION

Appellate counsel has filed a brief summarizing the proceedings below. Counsel presented no argument for reversal, but asked this court to review the record for error as mandated by *People v. Wende, supra*, 25 Cal.3d 436. Pursuant to *Anders v. California* (1967) 386 U.S. 738, appellate counsel listed as possible, but not arguable, issues: (1) whether the trial court lacked jurisdiction to hear Chastain's motion, an issue unhelpful to him, and (2) assuming it had jurisdiction, whether it erred by denying the motion. We offered Chastain the opportunity to file a brief on his own behalf, and he has not responded.

Our review of the entire record pursuant to *People v. Wende, supra*, 25 Cal.3d 436 and *Anders v. California, supra*, 386 U.S. 738, including the *Anders* issues, has not disclosed any reasonably arguable appellate issues. Appellate counsel has competently represented Chastain on appeal.

DISPOSITION

The order is affirmed.

McCONNELL, P. J.

WE CONCUR:

HALLER, J.

IRION, J.